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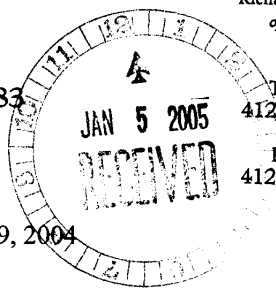

December 29, 2004

Re: STB Docket No. AB-556 (Sub No. 2X), Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH, and Darlington, PA in Mahoning and Columbiana Counties, OH and Beaver County, PA

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Dear Gentlemen:

Enclosed for filing please find the original and ten copies of (1) Reply of Railroad Ventures, Inc. to Joint Petition for Stay by Columbiana County Port Authority and Central Columbiana and Pennsylvania Railway and (2) Reply of Railroad Ventures, Inc. to the Supplement to the Joint Petition for Stay and Reply to the Petition for Clarification by Columbiana County Port Authority and Central Columbiana and Pennsylvania Railway. Copies of these Replies have been served on all parties of record.

Very truly yours,

VUONO & GRAY, LLC

Richard R. Wilson, Esq.
Attorney for Railroad Ventures, Inc.

RRW/bab
Enclosure
xc: Keith O'Brien, Esq.
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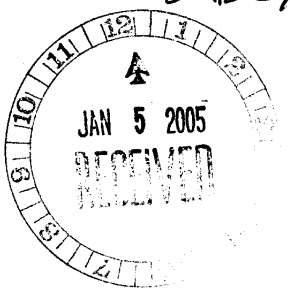

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-556 (Sub No. 2X)

RAILROAD VENTURES, INC. - ABANDONMENT EXEMPTION
BETWEEN YOUNGSTOWN, OHIO AND DARLINGTON, PA
IN MAHONING AND COLUMBIANA COUNTY, OH
AND BEAVER COUNTY, PA

REPLY OF RAILROAD VENTURES, INC. TO JOINT PETITION FOR STAY BY COLUMBIANA COUNTY PORT AUTHORITY AND CENTRAL COLUMBIANA AND PENNSYLVANIA RAILWAY

Richard R. Wilson, Esq.
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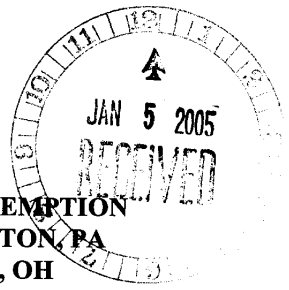
(412) 471-1800

Date: December 28, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD



Docket No. AB-556 (Sub No. 2X)

RAILROAD VENTURES, INC. - ABANDONMENT EXEMPTION BETWEEN YOUNGSTOWN, OHIO AND DARLINGTON, PA IN MAHONING AND COLUMBIANA COUNTY, OH AND BEAVER COUNTY, PA

REPLY OF RAILROAD VENTURES, INC. TO JOINT PETITION FOR STAY BY COLUMBIANA COUNTY PORT AUTHORITY AND CENTRAL COLUMBIANA AND PENNSYLVANIA RAILWAY

On December 23, 2004, Columbiana County Port Authority ("CCPA") and Central Columbiana and Pennsylvania Railway, Inc. ("CCPR") filed a Joint Petition for Stay of the Board's December 13, 2004 decision. Petitioners contend they intend to file a joint petition to reopen and reconsider and that if the December 13 decision is not stayed, it will become effective on January 12, 2005 and would require CCPA to pay Railroad Ventures, Inc. $217,282 plus interest. Railroad Ventures, Inc. ("RVI") files this Reply in opposition to the Joint Petition for Stay and requests that the Board deny a stay of its December 13, 2004 decision for the reasons hereinafter set forth.

To obtain an administrative stay, the movant must show: (1) there is a strong likelihood that it will prevail on the merits; (2) that the movant will suffer irreputable harm in the absence of a stay; (3) that other interest parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958) (Petroleum Jobbers). It is petitioners' obligation to justify the exercise of such an extraordinary

remedy, Cuomo v. United States Nuclear Regulatory Comm., 772 F.2d 972, 978 (D.C. Cir. 1985), and they carry the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974). Here, petitioners have failed to demonstrate that they are entitled to a stay pending a joint petition to reopen and reconsider under any of the criteria set forth in the above captioned cases.

1. Denial of a stay will not cause petitioners irreputable harm. The Board's December 13, 2004 order simply directs the payment by CCPA to RVI of $217,282 plus interest. "Mere injuries, however substantial, in terms of money...expended in the absence of a stay" do not constitute irreparable injury because of the possibility of receiving some alternative compensatory relief at a later date. See Petroleum Jobbers, 259 F2d at 925. Thus Petitioners can not, as matter of law, claim irreparable injury under the December 13, 2004 decision.

2. Petitioners are not likely to prevail on the merits. Petitioners contend that they are likely to prevail on the merits because the Board's November 2001 decision did not contain any requirement for competitive bidding. However, such a contention requires the complete disregard of the Board's mandatory requirements set forth in the last paragraph on page 7 under paragraph b Disbursement of Funds in the November 2001 decision. This sentence states:

> CCPA shall: (1) keep these funds in a separate account; (2) keep account of all funds expended for repairs, including evidence of competitive bids for each repair project (although we will allow for separate repairs to be grouped for the bidding process); and (3) complete all repairs for which escrow funds are to be used within 270 days from the effective date of this decision. Funds expended in this fashion shall be subject to challenge by RVI or its affiliate only for fraud.

The November 2001 decision directly contradicts the assertion by joint petitioners that "no such requirement can be found in the November 2001 decision" Page 3, Joint Petition. Indeed, joint petitioners appear to have overlooked the most important sentence in the Board's November 2001 decision. To further confirm this fact, RVI has attached a copy of Page 7 of the November 2001 decision as Exhibit A to this Reply.

Moreover, the arguments asserted by CCPA and CCPR are untimely and should have been presented to the Board in the Petitioner's pleadings filed in response to RVI's Reply to the Joint Motion Seeking Final Closure of the Escrow Account back in 2003. As indicated in the Petition for Stay, Petitioners now seek to reopen and relitigate their failure to comply with the directives of the Board's November 2001 decision. In that connection, the rationale expressed by the Board in denying RVI's Petition to Reopen the Board's valuation of the line has equal application to petitioners attempt to reopen and relitigate their failure to adequately administer and account for the repair funds entrusted to them by the STB. Accordingly, there is nothing in the Petition for Stay that invalidates the STB's documentation and competitive bidding requirements which were central and material to the November 2001 decision and were properly enforced by the Board in the December 13, 2004 decision.

Petitioners also complain that the Board's decisions appear to be based on speculation that certain bids were contrived.[1] However, the Board's December 13, 2004 decision is based on the evidentiary record submitted by RVI witnesses and by joint petitioner witnesses. The Board's decision made a careful review of the various

[1] The petitions object to the Board's decision regarding the Old Route 51 and Cannelton crossing but have their facts mixed up. Both crossings were overpaved with asphalt but no rails were removed. PennDOT had filed a complaint with the Pennsylvania Public Utility Commission but only the PUC, not PennDOT has authority to suspend a crossing in Pennsylvania and a suspension order was never issued. Instead, CCPR negotiated a settlement order with PennDOT and the PUC staff which did not preclude competitive bidding for these crossings. The crossing at State Route 51 (an entirely separate crossing) was illegally removed by PennDOT under the mistaken assumption that the line had been abandoned and repairs were ultimately paid for by PennDOT. Of course, petitioners downplay any aspect of their submission of bogus competitive bids for the Old Route 51 and Cannelton crossings.

contentions regarding each repair expenditure and concluded that in certain cases the explanations offered by CCPA and CCPR witnesses were simply not plausible or credible. There is more than enough evidence of record to justify such findings by the Board and not withstanding petitioners' displeasure with those findings, there is nothing in those findings that is erroneous or that conflicts with other substantial credible evidence.

Finally, petitioners complain that "what is not standard practice is the requirement that a party submit documentation in the form of receipts for vehicle and travel expenses, billing sheets, time logs as well as cancelled checks and pay stubs to support allocation of employees' salaries and benefits." Petitioners go on to argue that if the Board would require submission of that type of documentation, it would impose a new evidentiary standard and that the Board should stay the effective date of its December 2004 decision and provide CCPR with an opportunity to deal with this new and unexpected evidentiary requirement. However, that claim is simply without merit. Submission of time sheets, logs, billing sheets, and cancelled checks and other similar documentation is standard procedure in the administration and documentation of construction contracts. Moreover, such a requirement, even if it were not routine, is not unreasonable under the facts and circumstances present in this proceeding. In fact, these deficiencies in documentation were pointed out by RVI in its April 3, 2003 filing and CCPA and CCPR had a full opportunity in rebuttal to present such additional documentation in support of its motion seeking final closure of the escrow account but they did not do so. To stay and reopen these proceedings after nearly two years invites the submission of after-the-fact created documentation for which there can be no credible audit trail to confirm the accuracy or

authenticity of such information. Thus, in none of their arguments have petitioners demonstrated the likelihood that they will prevail on the merits.

3. A stay will substantially harm RVI. It should be recalled, that the $375,000 escrow fund was created by the Board from the proceeds of sale to which RVI was otherwise entitled from the forced sale of the former Youngstown and Southern Railway line pursuant to the Board's OFA procedures. In the interim years in which CCPA has owned and CCPR has operated this rail line, millions of public dollars have been invested in that line yet CCPR has filed for bankruptcy and CCPA is making plans to transfer operations on the line to the Ohio and Pennsylvania Railroad with the intent of subsequently selling the line to that company or its affiliate.

The Board has carefully reviewed the record of the repair expenditures made by CCPA and CCPR with regard to this rail line and has concluded that $217,282 were not properly accounted for or attributable to expenditures authorized for payment from the fund by the Board under its November 2001 order. Thus, further delay of RVI's receipt of those monies constitutes a deprivation of property without due process of law since the Board has determined that RVI is still due $217,282 plus interest in order to receive constitutional minimum value for its rail properties. The infringement of its constitutional right to compensation for its property is certainly a harm which RVI has suffered and will continue to suffer were the Board to grant the stay requested by petitioners.

4. No public interest would be served by a stay because the harm to CCPA is not irreparable. CCPA has numerous interests in various industrial and port facilities, has established lines of credit with various banks and enjoys a close relationship with various state agencies from which it receives and administers financial grants and loans. It

successfully obtained substantial public and private funding for this very rail line. CCPA has or can arrange for funds to pay this order. Finally, the obligations imposed on CCPA by the STB have been pending since November 2001 and there has been more than an adequate period of time in which CCPA could have planned for and made arrangements to pay any refund order issued by the STB. CCPA cannot be heard to complain at this point in time that it simply has no money and should not therefore have to honor its repayment obligation under the STB's order. Such a disclaimer would not serve the public interest.

CONCLUSION

For the above stated reasons, the Board should deny the stay and enforce its December 13, 2004 decision. There is no likelihood that the petitioners will prevail on reconsideration or if required to seek judicial review. Nor will CCPA suffer irreparable injury if required to pay RVI the sum of $217,282 by January 12, 2005. RVI has already suffered the extended deprivation of its constitutional right to compensation for its rail line and further extension of that deprivation is simply unjustifiable. Likewise, it is not in the public interest for CCPA and CCPR to disregard the specific accounting and documentation requirements imposed on them by the Board's November 2001 order and to further evade that repayment obligation.

Respectfully submitted,

VUONO & GRAY, L.L.C.

By: /Richard R. Wilson/

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RVI's disregard for the common carrier obligation cannot be considered as capital expenditures, but rather as necessary repair expenses to restore the line to service and should be covered from the escrowed funds.

b. Disbursement of Funds. We ordered the establishment of the escrow account so that an independent manager would conserve the account's assets, ensure timely payment of funds to CCPA, and surrender any unused funds to RVI after the repairs were made. RVI's position and actions regarding the escrow account have not furthered these goals, but rather have frustrated the orderly administration of these funds and have prevented disbursement of funds from the account for legitimate expenditures that were meant to be covered by the fund.

RVI first attempted to assert a right to make repairs itself. When that attempt was rejected, RVI tried to reserve for itself a right to determine in the first instance what crossing expenses should be subject to reimbursement. Under the procedures proposed by RVI, CCPA could proceed with repairs only after RVI approved both the work involved and the estimated cost of repairs. CCPA objected vigorously to RVI's proposed approach. The disagreements between the parties were such that Mr. Davis was unwilling to continue as escrow agent because he did not want to be "caught in the middle of an explosive situation which will most likely end up in further litigation." Exhibit 4 to CCPA Request for Clarification.

Under these circumstances, we do not believe that finding a suitable replacement escrow agent would be an easy task. Nor do we believe that it is necessary to do so. Rather, we now conclude that the best way to ensure that RVI does not interfere further with the orderly administration of these funds and the accomplishment of our original objectives in setting up the fund is to allow CCPA to manage the funds directly. Accordingly, we will direct Mr. Davis (the escrow agent who resigned) to make a lump-sum, one-time payment of the entire amount in the escrow account to CCPA immediately. CCPA shall: (1) keep these funds in a separate account; (2) keep account of all funds expended for repairs, including evidence of competitive bids for each repair project (although we will allow for separate repairs to be grouped for the bidding process); and (3) complete all repairs for which escrow funds are to be used within 270 days from the effective date of this decision. Funds expended in this fashion shall be subject to challenge by RVI or its affiliates only for fraud.

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[11](...continued)
actions of third parties, much less have invited those responsible for road repairs to pave over any portion of its tracks. Accordingly, it does not matter whether RVI authorized the modifications to the right-of-way or whether a simple lack of due diligence was the cause for sections of the track to become unserviceable; we hold RVI responsible. RVI may in turn seek to enforce against local governmental entities any promises that they would compensate RVI for its expenses of fixing the track and appurtenances.

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of December, 2004 served a copy of the Reply of Railroad Ventures, Inc. to Joint Petition for Stay by Columbiana County Port Authority and Central Columbiana and Pennsylvania Railway following by First Class United States Mail, postage prepaid:

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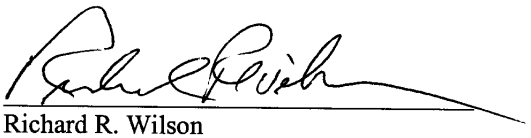

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